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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 621

BAYSIDE BUS CORPORATION,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

TITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

EMANUEL HARRIS,
Counsel for Petitioner.

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of BAYSIDE BUS CORPORATION respectfully shows to this Court:

This is a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

On November 25th, 1942 an order was made by the said Circuit Court of Appeals affirming a judgment of the United States District Court for the Southern District of New York entered on June 11th, 1942 dismissing the complaint herein. A petition for rehearing in the said Circuit Court of Appeals was denied on November 25th, 1942.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, Act of February 13th, 1925.

Statement of Matters Involved.

The action arose out of contracts made by the respondent with the petitioner for the transportation of W.P.A. workers (R. 10, 60, 62).

It was provided by the said contracts that payment would be made by the respondent only for the exact number of passengers transported in accordance with all the terms of the contract at the prices quoted therein. It was further provided by the said contracts that the number of workers to be transported was not guaranteed but that the petitioner would be notified in advance of the number of passengers to be carried on each following day subject to a variance of ten per cent more or less although the petitioner's acceptance of notice by noon of the previous working day of a greater modification than ten per cent would be held binding and it was further provided that the petitioner would supply sufficient buses to conform to the schedules in the contracts and would also have available a reserve of ten per cent to meet contingencies (R. 11, 16, 60, 62).

Respondent breached the contracts in that it failed to furnish for transportation passengers within the ten per cent variance in numbers thereof permitted by the contracts. The extent of such variances in excess of ten per cent between the number of passengers petitioner was directed to prepare for and the number actually furnished by the respondent are set forth in the record (Plaintiff's Ex. 2, R. 60, 62, 64).

The prices fixed by the contracts for the transportation of such passengers are set forth in the record (R. 13, 60, 62).

The amounts agreed to be paid by respondent for transportation of passengers ordered but not furnished was the sum of $1633.21 on the first contract, $440.63 on the second contract, and $635.66 on the third contract, making a total of $2709.50, which is the amount sued for in this action (R. 3, 6, 8, 9).

The District Court dismissed the complaint at the end of the petitioner's (plaintiff's) case, on the ground that the exact number of passengers transported measured the obligation of the respondent to make payment, on the further ground that the preparation of vouchers by the petitioner on the basis of the number of passengers actually carried and the acceptance of payment in conformity with those vouchers were a satisfaction by the petitioner of the terms of the contract and that there was a failure to prove damages (R. 56).

The Circuit Court of Appeals in its opinion held that there was a breach of contract by reason of the failure of the respondent to give accurate notice of the number of passengers to be carried within the specified limit, thus reversing the District Court on the construction of the contracts (R. 91).

The Circuit Court of Appeals said nothing in its opinion with reference to the alleged satisfaction of the terms of the contracts by the petitioner by reason of the preparation of the vouchers aforesaid and the acceptance of payment thereon.

However, the Circuit Court of Appeals held that although petitioner was entitled to recover for any losses which it suffered from having to provide buses in accordance with the notice given by the respondent it could not allow recovery for the reason that any loss in connection with the shortages of passengers furnished would fall upon the petitioner's sub-contractors and not upon the petitioner (R. 91). Therefore, the Circuit Court of Appeals held that

petitioner had proved no loss and judgment was affirmed on the ground that no damages were proved (R. 93).

Questions Presented.

1. Were the relations of petitioner with its sub-contractors material to the right of petitioner to recover for respondent's breach of contract or was the amount of the petitioner's recovery affected thereby?

2. Has the proper measure of damages been applied by this Circuit Court of Appeals in determining the loss sustained by petitioner?

3. In view of the holding by the Circuit Court of Appeals contrary to the judgment of the District Court that respondent had breached the contracts, should not the Circuit Court of Appeals have remanded the cause to the District Court for the purpose of affording the petitioner an opportunity to prove its losses?

Reasons for Allowance of Writ.

The judgment of the Circuit Court of Appeals was contrary to the applicable decisions of this Court with respect to

a) the effect upon petitioner's recovery of its relations with its sub-contractors;

b) the measure of petitioner's damages;

c) the right of petitioner to prove its losses.

The petitioner therefore prays that a writ of certiorari may be allowed to review the judgment of the said Circuit Court of Appeals and that a writ may be issued to the Circuit Court of Appeals for the Second Circuit directing that

all the proceedings in this case may be forwarded to this Court for review.

Respectfully submitted,

BAYSIDE BUS CORPORATION,
By EMANUEL HARRIS,
Counsel for Petitioner.

Dated, New York, December —, 1942.